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June 8, 2015

VIA ECF

Justice Sandra L. Townes, U.S.D.J. United States District Court 225 Cadman Plaza East Brooklyn, NY 11201

Re: Brown v. Marriott International, Inc. Docket No.: 14 CV 5960 (SLT) (MDG)

Handling Attorneys: Alan C. Salzman, Mitchell G. Shapiro and Harvey Winer

Dear Judge Townes:

We represent the Plaintiff; defendant has filed a second request for a pre-motion conference on 6/3/15 (23). This is our response. Defendant made an earlier similar request dated 2/17/15(7) which you denied without prejudice (15) on 5/7/15, with leave to re-file after we filed our amended complaint, which we did on 5/12/15(16). Defendant now also attacks the sufficiency of the amended complaint (FRCP 12(b)(6)—failure to state a claim). Previously he only sought leave to move to dismiss on forum non conveniens and inability to join indispensable parties (e.g. the St. Kitts entities).

Initially we bring to your attention that currently we have pending before Magistrate Go an application to compel defendant to provide discovery which was just filed on 6/8/15(25). A 6/22/15 conference is scheduled, at which time it is anticipated that Magistrate Go will rule on disclosure. The significance of this discovery application to the Defendant's renewed request for a pre motion conference will be more fully outlined below.

FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED

Rule 8 (FRCP) "General Rules of Pleading" Section (a)(2)— only require a "short and plain statement of the claim showing that the pleader is entitled to relief". This has come to be known as "notice" pleading— all that is required is giving defendant notice of the claims and their grounds. While the statute has not changed, recent Supreme Court cases, including <u>Ashcroft</u> v. <u>Iqbal</u>, 556 US 662 (2009) cited by defense, require that the claims be "plausible". <u>Ashcroft</u>, supra however was a civil rights suit brought by a Federal detainee against the government regarding

treatment at a maximum housing unit, far afield from a bodily injury claim suffered as a result of defendants negligence.

One Federal commentator in analyzing <u>Ashcroft</u> states "trial courts may not use Rule 12(b)(6) to screen weak (but plausible) cases at the pleading stage: "the issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims" Steven S Gensler WEST publishing <u>Rules and Commentary FRCP</u> 2012 Rule 12 Pages 231-2 (internal citations omitted). Our case on the other hand, is not abstruse but a claim for bodily injury based on a slip and fall in plaintiff's room at the St. Kitt's Marriott Hotel, due to the negligent maintenance and repair of a leaking ceiling air conditioner and vent. The same commentator reminds us that "The court must accept the factual allegations in the complaints as true and construe all facts in favor of the plaintiff" <u>Gensler supra page 232</u>. In this case at bar, defense clearly has been apprised of the nature of the claims.

And while plaintiff contends the amended complaint is adequate, if this court disagrees, it is urged that leave to amend again be permitted or that any dismissal be without prejudice (the three year negligence statute will not expire until July 2016).

However <u>Gensler</u> supra also points on out on page 233 that if discovery would tend to support the pleadings, this type of dismissal application be deferred pending receipt of the discovery (now pending before Magistrate Go), especially "where the information of wrongdoing typically lies in the defendant's hands".

Defendant cites <u>DeJesus</u> v. <u>Sears, Roebuck</u>, 87 F3d 65 for the proposition that the "agency" claims were inadequate but that case, a RICO matter, sounded in Fraud—invoking the higher pleading standards of Rule 9(b)—inapplicable to mere agency allegations. Defendant cites <u>Neubauer v. Eva-Health</u>, 158 FRD 281, also as to the agency/control issues. However again that was a SEC fraud case. But that case helps plaintiff in that it held that allegations of control need not even be made with particularity, <u>Coraggio v. Time Magazine</u>, 1995 US Dist Lexis 5399, also cited by defendant as to corporate control, was a civil rights case, and concerned standards promulgated by the NLRB as to when two businesses may be considered as a single employer.

As to the estoppel claims, defendant states in his 6/2/15 letter (23) that the Marriott website specific to St. Kitts indicates that "Hotels shown on Marriott.com may be operated under a license from Marriott International Inc. or one of its affiliates" (page 2 Document 23). We are striving to show, as we have alleged, and through the discovery we have and seek (see pending application to Magistrate Go) that defendant MII should be liable for this negligence case since MII induced plaintiff (and all its customers) to select the St. Kitts Marriott as their vacation location, by leading them to believe the defendant would stand behind the St. Kitts Hotel if something went awry. MII could have clearly disclaimed responsibility as they have done with their other entities (Exhibit "A") but here they merely announced the meaningless and ambiguous statement that the hotel "may be" operated under a license from MII "or one of its affiliates". In Exhibit "A" Marriott International Inc. seeks to distinguish itself from its own Marriott Vacation Club by using the following language "Marriott Vacation Club International and the programs and products provided under the Marriott Vacation Club Brand are not owned, developed or sold by Marriott International, Inc." Furthermore the MII, lists the St. Kitt's Marriott as one of its 500 worldwide locations (Exhibit "B"). Defendant asks how plaintiff was

prejudiced-- she is at risk now for being denied or unable to receive adequate compensation for injuries sustained due to the negligence of Defendant.

In addition, as evidenced by pamphlets, bills, accident report, and pictures (Exhibit "C") obtained at the St. Kitts Marriott, the exhibits attached and a stay at the St. Kitts Marriott Hotel, offers not a shred of evidence that the Hotel is anything but an owned, operated, and managed Marriott International Hotel.

Defendant also challenges the Fraud allegations. FRCP Rule 9(b) requires that fraud be alleged "with particularity". We have done so; if the court disagrees, "violations of Rule 9(b) are pleading violations—not merits deficiencies—the trial court ordinarily should give the plaintiff leave to amend ..." Genlser supra at page 154. Furthermore, responses to the discovery demands should be received. Defendant points out that plaintiff must establish damage caused by her reliance on the fraudulent statements. Defendant begs the question by asserting that plaintiff will have an adequate alternative forum in St. Kitts. The court may take judicial notice that the costs associated with litigating in St. Kitts will prejudice this prosecution. As plaintiff required a horrific cervical fusion operation between cervical level C3-C4, C4-C5, C5-C6, and C6-C7 which necessitated the implementation of screws, rods and plates, the cost of bringing medical experts alone to St. Kitts, if available, would extinguish her case. Furthermore her damages would be limited compared to Brooklyn when one considers the severity of her surgery and its consequences.

Defendant cites Sevison v. Cruise Ship Tours, 1997 US Dist Lexis 12728, a maritime case, for the proposition that St. Kitts provides an adequate forum, but the forum non conveniens motion was denied in that case and American Law applied although the accident took place in St. Kitts. The defendant has the "almost impossible" burden to show when the plaintiff is American and the forum foreign, that plaintiff's choice is inconvenient. Sevison supra page 7 citing other cases. Sevison supra goes on to support plaintiff in the case at bar. Citing Neeley v. Club Med, 63 F3d 166, where an American Citizen diving instructor was injured in St. Lucia, the Court noted the majority of the tourists were American (same as the case at bar), and that defendants "continual and quite substantial commercial invitation of American tourists ... implicates interests in the United States" Sevison supra page 28 (same as case at bar) and citing Neeley supra, that "the United States has a great interest in assuring adequate protection for the life and health of Americans who are solicited in the United States to vacation at Club Meds or other foreign spots" Sevison supra page 29 (same as case at bar). Defendant should not be allowed to make a forum non conveniens motion. The cases cited by Defendant are esoteric in nature and bear no factual resemblance to the Brown case demonstrating the inadequacy of defendant's position.

INDISPENSABLE PARTIES

Defendant asserts he cannot implead the St. Kitts entities as they are not subject to this court's jurisdiction; however he fails to reveal to the court that defendant Marriott International Inc. (MII) and the St. Kitts entities are all named insureds on the same American Home Assurance Co. liability policy (Exhibit "D"). This policy was one of the few items defendant voluntarily disclosed. A New York State insurance company has insured everyone for the subject risk (personal injury)—and no defense attorney would ever implead insureds from the same policy as his own client. The real party in interest is the American Home Insurance Company.

Unabashedly and with malice aforethought, Marriott International Inc., has entered into a worldwide deceit that ensnared many as well as the plaintiff herein. Call it stacking the deck, dealing from the bottom or heads I win, tails you lose, the Marriott through falsehood and disguise is seeking to deny Ms. Brown her rightful claim to seek damages for the significant injury she suffered by having her case heard in the United States District Court. There is no question that MII has profited from Ms. Brown's stay at the St. Kitt's Marriott Resort and Casino, otherwise their name would not appear. Their name invokes reliability, experience and confidence to anyone staying at a Marriott. Its name brings business, brings a higher room rate, and brings higher expectation than local hotels not bearing the Marriott name.

It is also painfully obvious that defendant's position in seeking to transfer this case to St. Kitts is all about money. The parties are well aware that a transfer of this case would essentially deny plaintiff her day in Court. On the other hand, due to the terrible injury suffered by plaintiff and the availability of her witnesses here, the plaintiff if successful could receive a substantial sum of money for her injuries. Profit, greed, and lack of transparency should not prevail. The innocent little guy should not be crushed by giant corporate titans.

In the matter at hand Marriott International Inc., has benefited from its name and reputation. However, when Ms. Brown sustained her injury at its Hotel, it shyly casts its eyes downward and without remorse disclaims responsibility and seeks to remove her case to St. Kitts. This is a blatant example of Marriott's attempt to use the Court in furtherance of its nefarious scheme and deny plaintiff any chance of recovery for her injuries.

This is precisely why our fifth cause of action for punitive damages should stand. The officers and directors of defendant MII surely have contrived, developed, endorsed and approved of this bait and switch scheme. Lure tourists to St. Kitts or other Marriott International locations profit from their booking with Hotels with the Marriott name—then abandon them when they sustain injury due to the Hotel's negligence.

Very truly yours,

SALZMAN & WINER, LLP.

Mitchell G. Shapiro, Esq.

MGS/mc Encl.

cc:

Daniel M. Stewart WHITE FLEISCHNER & FINO, LLP. Attorneys for Defendant 61 Broadway New York, NY 10006

EXHIBIT "A"

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My-VacationClub.com has not yet been optimized for mobile devices.





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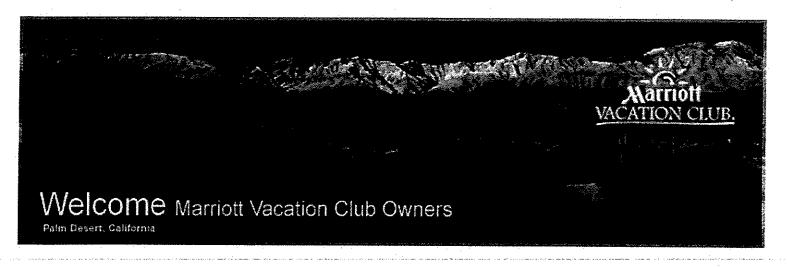


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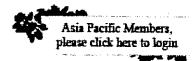
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We found 1 hotel in S	t. Kitts and Nevis			Edit Your Search	
Get our best available rate on M	farriott.com. See brand exclusions and gua	rantee terms.		Check-in	
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The Royal Beach Casino					hat's This? 🛄
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View Rates					
				SPECIAL RATES	•
The Marriott St. Kitts Resort & Royal Beach Casino captivates you the moment you see it, immersing you in the culture and atmosphere of the most romantic	: . <i> 1</i>			U	pdate
of Caribbean Islands. Our St. Kitts hotal is an unparalleled Island vacation experience.				Filter Results	
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High-speed Internet				BRANDS	
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Fitness center Business center				☐ Marriott Vacation Club (1)	
Restaurant on-site				Ti marriorr Agradori Cinn (T)	1
Pool Kitchen/kitchenette					
Plug in Panel Bet friendly					
 Pet friendly Room service 					
View Hotel Website View Photo Gallery	-				
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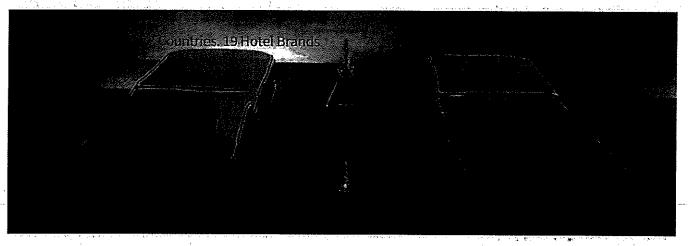
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BVLGARI

EDITION



AUTOGRAPH COLLECTION R REMASSIANCE



DELTA





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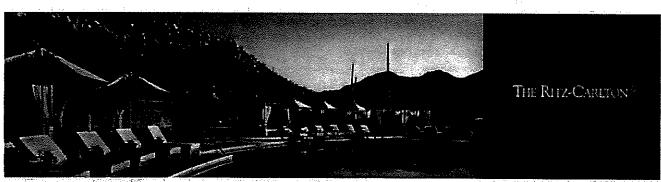
SPRINGHILL SPRINGHILL FAIRFIELL

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محصر





The Ritz-Carlton

An enduring symbol of sophistication, style and legendary service, The Ritz-Carlton creates exceptional luxury experiences at more than 80 hotel and resort locations around the globe. The memories created by the ladies and gentlemen of The Ritz-Carlton stay with you long after you leave. Hotel directory

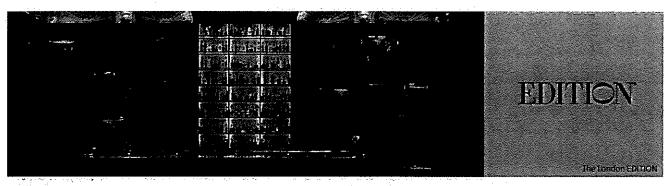
Exclusive luxury partner of Marriott Rewards®



BVLGARI® Hotel & Resorts

This is the leading luxury hospitality collection in the world. It is comprised of a few select properties in major cosmopolitan cities and luxury resort destinations. Each location makes a strong reference to the local culture while retaining a distinctly Italian contemporary luxury feel.

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EDITION®

Ian Schrager's refreshing collection of one-of-a-kind modern luxury hotels, created in collaboration with Marriott, is an evolutionary response to the desire for a sophisticated experience from the guest with a contemporary lifestyle. The istanbul EDITION is the brand's debut property, followed by the recent premiere of The London EDITION. Planned openings are also scheduled in gateway cities such as Miami Beach, New York, Abu Dhabi and several other cities. Hotel directory.

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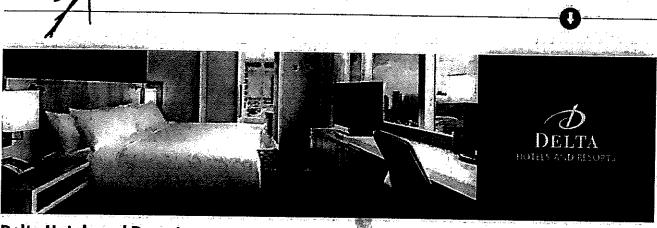




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Today, Marriott Hotels celebrate the travelers of the world. Our mission is to host you brilliantly... to make your every event and stay with us unforgettable and effortless. From next gen meeting spaces to tech-enhanced guest service and beyond, we offer 500 locations worldwide to help you connect, relax and recharge — wherever it is your travels take you. Hotel directory

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One of North America's leading four-star brands, Delta Hotels and Resorts offers hotels in gateway cities such as Toronto and Edmonton, as well as one-of-a-kind resorts in destinations including Banff and Whistler. Whether you're traveling for business or play, modern and timeless design, personable service and well-appointed amenities are always included.

We'll soon be welcoming Delta Hotels and Resorts into Marriott Rewards*. Check back for details on when you can earn and use points with our newest brand.



Marriott Executive Apartments®

EXHIBIT "C"

Case 1:14-cv-05960-NG-RLM Document 26 ST. KITTS
RESORT
& THE ROYAL BEACH CASINO **M**arriott

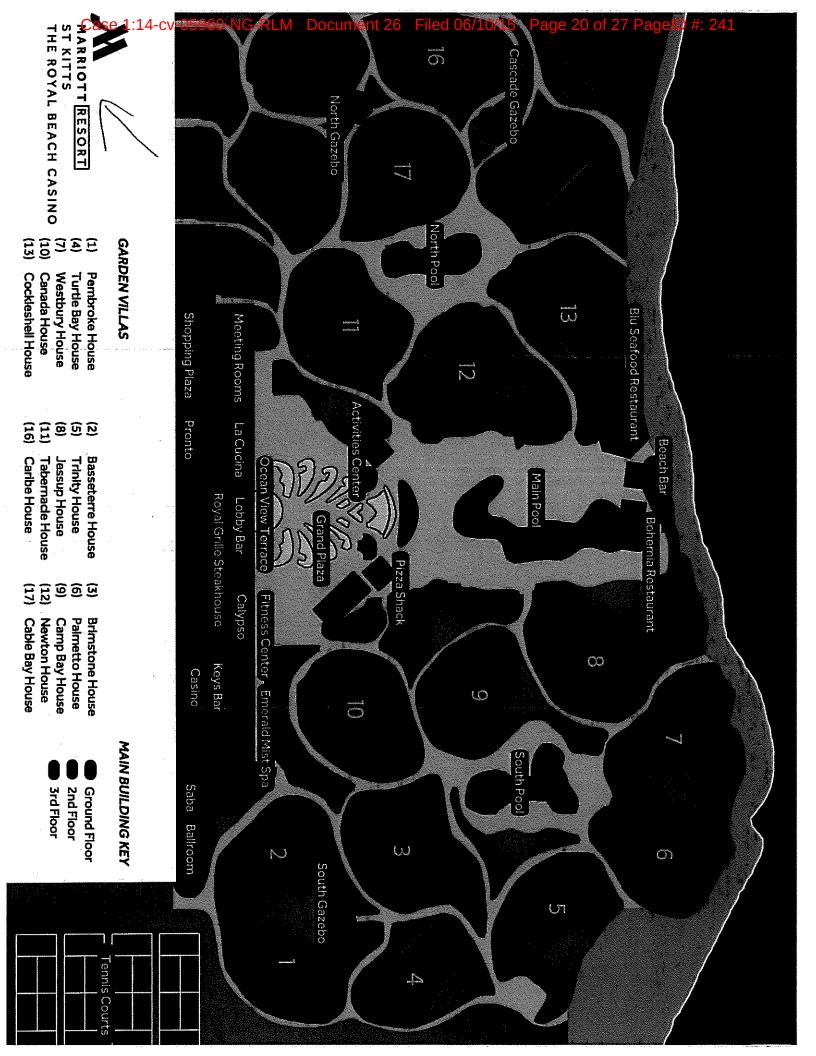
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RESORT MAP & RESTAURANT GUIDE

858 Frigate Bay Road | Frigate Bay | St. Kitts | West Indies Tel-1.869.466.1200 | Fax: 1.869.466.1201 www.stkittsmarriott.com





ST. KITTS

RESORT

& THE ROYAL BEACH CASINO



Veronica Browne-Mulvaney 463 East 56 St Brooklyn NY 11203 United States

INVOICE

Company Name

Room No. : 12215
Arrival : 17/07/13
Departure : 24/07/13
Page No. : 1 of 6
Folio / Inv. : 169614 /

Conf. No. : 81838062 User ID : KTAYL097

Cashier No.: 1021

Date Description Charges Credits USD USD		Thank you for staying with us		24/07/13	
20/07/13 Room Service Room# 00455 : CHECK# 345 20/07/13 Room Charge 84.00 20/07/13 Island Enhancement Tax 1.68 20/07/13 Service Charge 10.50 20/07/13 VAT 10% 8,40 21/07/13 Calypso Restaurant Room# 12215 : CHECK# 1038 21/07/13 Room Charge 84.00 21/07/13 Room Charge 84.00 21/07/13 Room Charge 84.00 21/07/13 Room Charge 84.00 21/07/13 Service Charge 10.50 21/07/13 Service Charge 10.50 21/07/13 Service Charge 10.50 21/07/13 VAT 10% 8.40 22/07/13 Calypso Cafe 8.02 Room# 12215 : CHECK# 2161 22/07/13 S&P Engineer Hosp Guest had leak in room and fell, credit was done for tax fees and hospital and band aid 22/07/13 Bohemia 84.00 22/07/13 Island Enhancement Tax 1.68 22/07/13 Service Charge 10.50 22/07/13 Island Enhancement Tax 1.68 22/07/13 Service Charge 10.50 22/07/13 Emerald Mist Spa	Date	Description	Charges	Credits	
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ST. KITTS

& THE ROYAL BEACH CASINO

Marriott

Verdalca Browne-Mulvaney

463 East 56 St Brooklyn NY 11203 United States

INVOICE

Company Name

Room No.

12215

Arrival

17/07/13

Departure

24/07/13

Page No. Folio / Inv. 2 of 6 169614/

Conf. No.

81838062

User ID

KTAYL097

Cashier No. :

1021

	,	Thank you for staying with us		24/07/13
Date	Description		Charges USD	Credits USD
23/07/13	Room Charge		84.00	
23/07/13	Island Enhancement Tax		1.68	•
23/07/13	Service Charge	V	10.50	
23/07/13	VAT 10%		8.40	
24/07/13	Master Card / Euro Card XXXXXXXXXXXXX9781	xx/xx		630.94
•			703.00	703.00
		Balance	0.0	00 USD

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Please also observe that we do not accept personal checks to settle the bill.

St. Kitts Marriott Resort

Voluntary Statement:

With the understanding that I'm not obligated to give a statement and that I might seek legal advice at any time before any statement or declaration is given.

Full Name: (Please Print Name:) Mrs. Mr. Ms. (Please Print Name:) Mrs. Mr. Ms. (Please Print Name:) Mrs. Mr. Ms. (Please Print Name:) Mrs. Mr. Ms. (Please Print Name:) Mrs. Mr. Ms. (Please Print Name:) Mrs. Mr. Ms. (Please Print Name:) Mrs. Mr. Ms. (Please Print Name:) Mrs. Mr. Ms. (Please Print Name:)
Mrs. Mr. Ms. 1 EXONICA TOROWN - MUCUALOY 4/9/56
Address: 463 EAST 56 ST
City: BROOKLY NY
Country: USA
State/Province:
ZIP: 11803 Email: Buffie3 C valizor Date: 9/18/13
Phone Number/s: 718 679-1713 - 917 584-9432
Work Address: DOE 5400 TILBERALE REGISTERS NURLE
To the best of your ability, describe the incident. Please include all information.
I got up to walk to the leather
I delipped and fell in water
near the leatherm door. There
was a leaking air AC.
Dest. in Helson
The state of the s
have reviewed this statement and believe t is true and accurate to the best of my recollection.
Signature: Witness: With Comer Cald Code
Associate: Guest: witness: Other: Report code: (office use only): 13

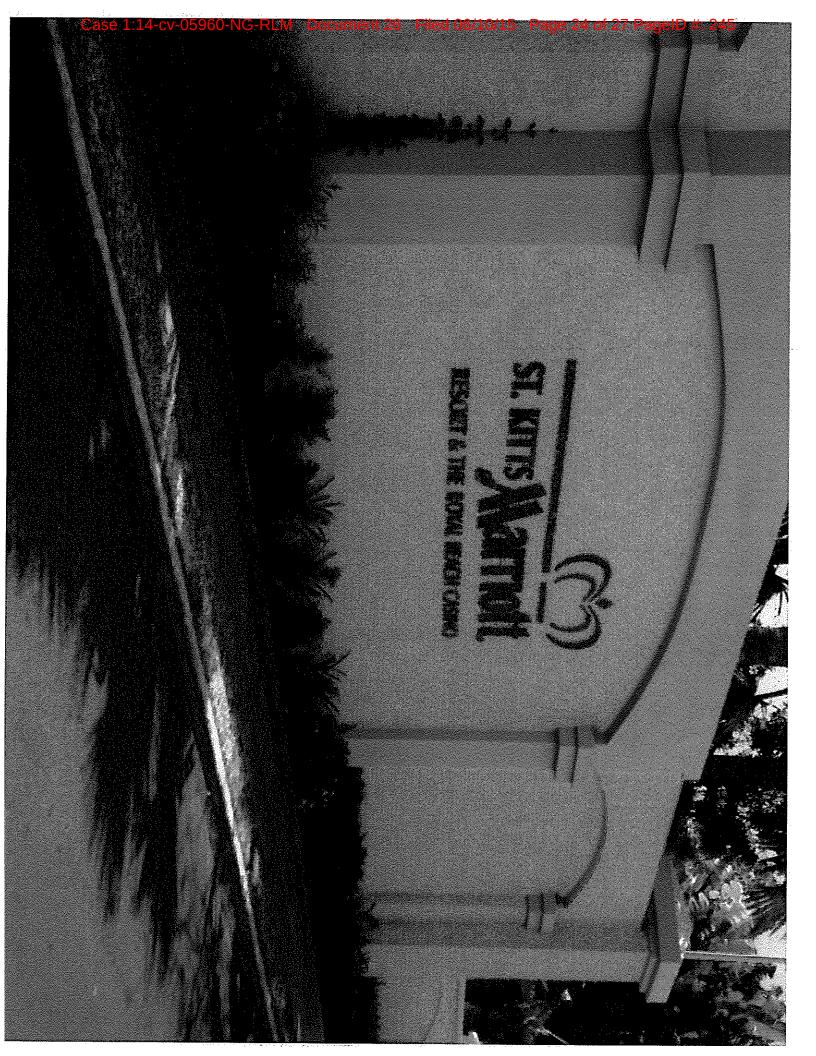


EXHIBIT "D"

FOREIGN COMMERCIAL GENERAL LIABILITY INSURANCE OCCURRENCE-BASED COVERAGE

American Home Assurance Company Executive Offices: 175 Water St. New York, NY 10038 **DECLARATIONS**

POLICY NUMBER: 03-1742

RENEWAL OF POLICY NO.: 03-1584

ITEM 1.	NAMED INSUR	ED:	NAMED INSURED'S ADDRESS (Including country):			
	Royal St. Kitts G Royal Beach Ca Manfolt Internal	Solf Club, St. Kitts Marriott Resort & The asing, Marriott St. Kitts Beach Club and lional, Inc.	Frigate Bay Road, Frigate Bay, St. Kitts. West Indies, St. Kitts & Nevis			
	☐ Individual	☐ Partnership	BUSINESS DESCRIPTION OF THE NAMI	ED INSURED:		
•		☐ Joint Venture	Lodoing Hospitality Contract Services Co	intract Catering and		
	Other:		Other Business Activities			
Dollar an	nounts are: 🔲	US Dollars Canadian Dollars				
	s of all Premises , Rent, or Occup		, St. Kitts, West Indies, St. Kitts & Nevis			
ITEM 2.	POLICY PERIC			\		
			n. Standard Time at the address set forth abo			
ITEM 3.	LIMITS OF INS	URANCE: In consideration of receipt exclusions of this policy, v	of the full premium, and subject to all the tea we agree to provide the following limits:	rms, conditions, and		
	Master C	Control Program Aggregate:	Not Applicab	le		
		Aggregate Limit (Other Than Prod-Comp	Operations): Not Applicable			
	Products	s-Completed Operations Aggregate Limit:				
Personal & Advertising Injury Limit:			\$3,000,000			
	Each Oc	currence Limit:	\$3,000,000	:		
	Medical	Expense Limit:	\$10,000			
	Damage	e To Premises Rented To You Limit:	\$3,000,000			
ITEM 4.	PREMIUM:					
	xposure	Premlum Basis	Rate	<u>Premium</u>		
Genera	I Liability/Auto	Revenues/# of Units	Flat Charge			
			Total Premium Payable at Inception:	REDACTED		
	Minimum Earned Premium:					
In Case of Loss, Notify: Broker's Name & Address: Commission:						
WorldSource Claims Communication Communicati						
WorldSource organis E-mail: worldsourcenyclaimsreporting@chartisinsurance.com Web; http://www.chartisinsurance.com/wsclaimsreporting Haggalt Hall, St. Michael.						
Fax: +1.212.881.9002 Bridgetown: Barbados, West Indies BB11059						

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